HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.27071 OF 2006

Between:

P. Radha Kishan Rao

…Petitioner

AND

The Superintending Engineer (RWS Circle),
Panchayat Raj, Uppal, Hyderabad and five others

...Respondents

: O R D E R :

Counsel for the petitioner : Shri K. Ram Reddy

29th December, 2006

Per G.S.SINGHVI, C.J.

This petition is directed against order dated 22-12-2006 passed by the Andhra Pradesh Administrative Tribunal at Hyderabad (for short, 'the Tribunal') in VMA Nos. 1406 and 1452 of 2006 in O.A No. 6769 of 2006, whereby the Tribunal vacated
ex parte interim order dated 17-11-2006.

A perusal of the record shows that on being recommended by the District Selection Committee, respondent No.6 – Smt. P.V. Rajeena was appointed as Junior Assistant in Zilla Parishad, Ranga Reddy with effect from 7-12-1979. She was promoted as Senior Assistant in Mandal Parishad, Shameerpet from 1-11-1999. By an order dated 30-8-2006, Chief Executive Officer, Zilla Parishad, Ranga Reddy promoted her as Superintendent. She joined that post on 31-8-2006. Petitioner – Radha Kishan Rao was appointed as Typist in 1979 by Superintending Engineer, Panchayat Raj (Mechanical Circle), Hyderabad. In 1992, he was promoted as Senior Assistant. By an order dated 27-9-2006, Superintending Engineer, Panchayat Raj Circle, Hyderabad has temporarily promoted the petitioner as Superintendent in the time scale of pay Rs. 7,770 – Rs. 18,575 and posted vice respondent No. 6 in the office of Executive Engineer, Ranga Reddy Division, Vikarabad, Ranga Reddy District (respondent No.2). He was relieved from the office of the Superintending Engineer on 11-10-2006 and reported for duty in the office of respondent No.2. The latter did not accept the joining report of the petitioner and sent letter dated 16-10-2006 to the Superintending Engineer seeking some clarification. In reply, the Superintending Engineer sent letter dated 24-10-2006 reiterating that as per the extant Government Orders, he was competent to make promotion to the post of Superintendent. Thereafter, the petitioner again approached respondent No.2 for being allowed to join duty, but the latter declined to accept the same. He then filed an application under Section 19 of the Administrative Tribunals Act, 1985 for issue of a direction to the respondents to allow him to join duty in furtherance of order dated 27-09-2006. The

application filed by the petitioner was registered as O.A No. 6769 of 2006. By an order dated 17-11-2006, a Single Member Bench of the Tribunal admitted the application and passed the following mandatory interim order:

> "Pending disposal of the OA there shall be interim Suspension of the impugned letter No. A2/51/2004 dated 16.10.2006 and consequential memo no.A2/64/2001 dated 16.10.2006 along with letter No.A2/562/2004 dated 4.11.2006 of the 2nd respondent and letter No.A2/516/2004-1, dated 1.11.2006 of the 3rd respondent. There shall be a further direction to the 2nd and 3rd respondents to admit the applicant into duty as Superintendent".

On being noticed by the Tribunal, respondent No. 6 and Chief Executive Officer, Zilla Parishad, Ranga Reddy District filed applications for vacating the interim order, which were registered as VMA Nos.1406 and 1452 of 2006. They pleaded that the Superintending Engineer was not competent to make promotion against the post of Superintendent in Zilla Parishad and the Chief Executive Officer alone was competent to make such promotion. After hearing the parties, the Tribunal passed the impugned order and vacated the ad interim order.

Learned counsel for the petitioner argued that refusal of respondent No.2 to accept the joining report submitted by the petitioner was per se illegal and the Tribunal gravely erred by vacating ad-interim order. He submitted that by virtue of order dated 27-9-2006 passed by the Superintending Engineer, the petitioner had acquired a valuable right and the same could not have been frustrated by adamant refusal of respondent No.2 to accept his joining report.

In our opinion, the writ petition is meritless and is liable to be dismissed summarily. It is an undisputed position that respondent No. 6 was promoted as Superintendent in August, 2006 and she had joined duty on 31-8-2006. It is also an admitted position that as on the date of passing order dated 27-09-2006, respondent No. 6 was already

holding the post of Superintendent. This being the position, it is difficult to fathom any rational reason for the action of the Superintending Engineer to promote the petitioner and thereby create a situation for reversion of respondent No.6 to the lower post. The questions whether the petitioner could have been promoted as Superintendent on temporary basis replacing respondent No.6 and whether respondent No.2 acted illegally by not allowing him to join duty in furtherance of order dated 27-9-2006 are yet to be adjudicated by the Tribunal after considering the pleadings of the parties, the documents produced by them and hearing the arguments of their representatives/advocates. Therefore, at this stage, we do not consider it proper to express any opinion which may prejudice the cause of either of the parties. However, we do not have the slightest hesitation to observe that learned Member of the Tribunal gravely erred by passing an ex parte interim mandatory direction for implementation of order dated 27-09-2006 and the order under challenge does not suffer from any jurisdictional error or patent illegality warranting interference under Article 226 of the Constitution of India.

It is settled law that while deciding the prayer for interim relief, the Courts and other judicial fora are required to bear in mind the factors like the prima facie case, balance of convenience, irreparable injury and above all the element of public interest. An interim order, which has the effect of virtually granting final relief to the party, cannot be passed by the Court or the Tribunal except when it is fully convinced that non-grant of such relief will cause irreparable injury to the aggrieved person and will result in miscarriage of justice. Even in a case falling in that category, interim order cannot ordinarily be passed without giving notice and opportunity of hearing. The case of the petitioner does not fall in the category of exceptional cases in which the Tribunal should have passed interim order and that too without issuing notice and hearing the affected parties.

In view of the above, we hold that the learned Member of the

Tribunal rightly vacated the ad-interim order and restored the possession which was obtaining on 17-11-2006.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No.34798 of 2006 filed by the petitioner for interim relief is also dismissed.

G.S. SINGHVI, C.J.

December 29, 2006

C.V. NAGARJUNA REDDY, J.

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